

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

Terry Edward McCall,	)	C/A No. 2:15-cv-01011-TLW-MGB
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
	)	Report & Recommendation
David E McAlhaney, Sgt. McConnell, and Sarah Drawdy,	)	
	)	
	)	
DEFENDANTS.	)	
	)	

The Plaintiff, a state prisoner proceeding *pro se*, filed the instant action on March 2, 2015, pursuant to 42 U.S.C. § 1983. (Dkt. No. 1.) The Plaintiff filed an Amended Complaint with leave of the court on October 9, 2015. (Dkt. No. 29.) Before the court is Defendant McConnell's Motion to Dismiss for Lack of Personal Jurisdiction and Insufficient Service of Process. (Dkt. No. 90.) In his motion, Defendant McConnell argues that he is entitled to dismissal of the case against him under Rule 12(b)(5) of the Federal Rules of Civil Procedure. (*Id.*) Defendant McConnell argues that the Plaintiff has never filed any proof of service of the Summons and Complaint on Defendant McConnell. (*Id.*)

Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the Plaintiff was advised of the dismissal procedure and the possible consequences if he failed to adequately respond to the motion. (Dkt. No. 93.) The Plaintiff responded to Defendant McConnell's motion on July 21, 2016. (Dkt. No. 102.) The Plaintiff's full response is as follows:

Now comes the Plaintiff with his response to the Roseboro Order, in which the Plaintiff will not object or defend the dismissal of Defendant Sgt. McConnell. And believes to dismiss him is in his best interest.

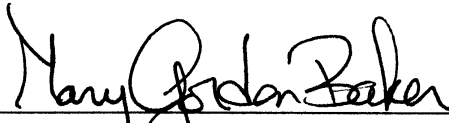
(Dkt. No. 102.) The Plaintiff signed the response. An examination of the docket confirms that no proof of service was ever filed as to Defendant McConnell.

Therefore, this court **RECOMMENDS** that Defendant McConnell's Motion to Dismiss for Lack of Personal Jurisdiction and Insufficient Service of Process (Dkt. No. 90) be **GRANTED**.

IT IS SO RECOMMENDED.

January 17, 2017

Charleston, South Carolina

  
\_\_\_\_\_  
MARY GORDON BAKER  
UNITED STATES MAGISTRATE JUDGE

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. **Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections.** “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk  
United States District Court  
Post Office Box 835  
Charleston, South Carolina 29402**

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4<sup>th</sup> Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4<sup>th</sup> Cir. 1984).